IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

AS.No. 60 of 1993(C)

OS.329/1991 of ADL.SUB COURT, THALASSERY
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APPELLANT: DEFENDANT:

CHELORA CHATHOTH MEENAKSHI AMMA,
D/O. THAMBAYI AMMA, CHELORA AMSOM,
PERINGALAYI DESOM, CANNANORE TALUK AND DISTRICT.

BY ADV. SRI.V.R.VENKATAKRISHNAN
SRI.N.C.JOSEPH
SRI.MATHEW JOHN

RESPONDENTS: PLAINTIFFS:
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1. **CHELORA CHATHOTH DEVAKI AMMA,**
D/O.THAMBAYI AMMA, CHELORA AMSOM,
PERINGALAYI DESOM, CANNANORE TALUK AND DISTRICT.

2. **...DO.... KANNAN NAMBIAR, S/O...DO...DO..DO...**

3. **...DO.....GOVINDAN NAMBIAR, S/O...DO..DO...**
ADUR, PADIATHADUKKA, P.O. KUNTAR, VIA MULLERIA,
KASARAGOD TALUK AND DISTRICT.

4. **...DO..... KALLIANI AMMA, D/O....DO....**
CHENIARAKKAL HOUSE,
CHEMBILODE AMSOM AND DESOM, P.O.MOWANCHERRY,
CANNANORE TALUK AND DISTRICT.

BY ADV. SRI.T.A.RAMADASAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 16/07/2007 ALONG WITH AS NO. 810 OF 1994, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORFDER ON C.M.P.NO.1556/1993 IN A.S.NO.60/1993

DISMISSED

16/07/2007 **SD/- K.PADMANABHAN NAIR, JUDGE**

/TRUE COPY/

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K.PADMANABHAN NAIR, J.

A.S. No. 60 of 1993

&

A.S. No. 810 of 1994

Dated this the 16th day of July 2007

JUDGMENT

These two appeals arise from two decrees and judgments passed in two different suits which were tried separately. But these two appeals were heard together because a common action of law and facts arise in both appeals.

A.S 60/1993

2. This appeal arises from a decree and judgment passed in O.S. 329/1991. The plaintiffs and the sole defendant are the children of the deceased Thambayi Amma. The 4 plaintiffs together filed the suit claiminig $^1/_5$ th share each in the plaint scheduled properties alleging that the property was purchased by Thambayi Amma as per sale deed No. 597/55. It was averred that Thambayi Amma died on 8-12-1985 and the property devolved upon the plaintiffs and the defendant in equal shares and each of the children is entitled to $^1/_5$ share.

3. The defendant filed written statement contending that the property originally belonged to one Chelora Chathoth Govindan Nambiar. He agreed to sell the property to her late husband Kunjiraman Nambiar It was contended that at the relevant period Kunjiraman Nambiar was

working as a teacher at Kasargode and he entrusted the sale price with Thambayi Amma, his mother-in-law and requested her to get assignment deed executed in his name. The vendor was the brother of Thambayi Amma. He wrote Thambayi Amma as the vendee in the sale deed. But she never got possession of the property. The properties were in the possession of her husband who was residing in the property after constructing a building. It was contended that the plaintiffs did not get any partiable right over the suit property. It exclusively belonged to the husband of the sole defendant.

4. Late. Sri. Kunjiraman Nambiar the husband of the sole defendant filed I.A 1779/1992 to get himself impleaded in the suit. The learned Sub judge by order dated 15-6-1992 dismissed that applicantion. . That suit was decreed. Challenging that decree the defendant has filed this appeal.

A.S. 810/1994

5. This appeal is filed by defendants 1 to 3 and 5 in O.S. 459/1992. The suit was filed by Kunjiraman Nambiar alleging that he was the absolute owner of the suit property . It was alleged that he was working as a teacher in a primary school at Kasargode. The suit property originally belonged to one Govindan Nambiar. The plaintiff

wanted to purchase the same in his name. In the sale deed the name of his Mother-in-law was written as vendee. It was also averred that the Govindan Nambiar was his wife's uncle and brother of Thambayi Amma. It was contended that though the name of Thambayi Amma was written in the sale deed, Thambayi Amma had no right or possession over the same. It was contended that immediately after the purchase, the plaintiff constructed a house in the property spending his money. The plaintiff and his family are residing in the house. Hence he sought for a declaration that he is the absolute owner of the property. The appellants filed a written statement contending that the property actually belonged to Thambayi Amma. The wife of the plaintiff is only a co-owner along with them. It was also contended that the defendants filed O.S. 329/1991for partition of the properties and the suit was decreed. It was contended that the decree was binding on the plaintiff. The 4th defendant alone supported the plaintiff. The learned Subordinate Judge after considering the evidence adduced in that case found that the plaintiff was the absolute owner in possession of the property and hence a decree declaring his title was passed. A decree for consequential injunction was also passed. Challenging that decree and judgment the defendants 1 to 3 and 5 have filed this appeal. During the pendency of this appeal the respondent died and his legal representatives are impleaded as additional respondents.

The following points arise for consideration in these cases.

(i) Whether the finding of the learned Sub-judge in O.S.329/1991 that the suit property absolutely belonged to Thambayi Amma is correct?

(ii) Whether the finding in O.S. 459/1992 that the plaintiff in that suit is the absolute owner of the suit property is correct ?

6. As I already stated the dispute to be resolved in both suits are one and the same. 32 cents of property comprised in Re-Survey No. 12/5 of Peringalayi desom Chelora Amsom originally belonged to the family of late. Govindan Nambiar. He got that property under a partition deed executed among the members of his family . On 22-6-1955 he executed a sale deed. In that sale deed Thambayi Amma was shown as the vendee. The plaintiffs in O.S. 329/1991 contended that the property absolutely belonged to Thambayi Amma. She became the owner of that property under the sale deed and after her death the properties devolved upon all her children and they became co-owners in respect of that property. The sole defendant in that suit is Meenakshi Amma one of the daughters of Thambayi Amma. She contended that 32 Cents of land absolutely belonged to her husband Kunjiraman Nambiar and Thambayi Amma never paid land tax for the disputed 32 cents. The trial court rejected that contention and found that the disputed 32 cents is also partiable. In O.S. 459/1992 the husband of Smt. Meenakshi Amma, Sri.

Kunjiraman Nambiar contended that he was the absolute owner and he is in possession with the property and he is residing in the building situated in that property. The plaintiffs in O.S 329/1991, who are arrayed as defendants 1 to 3 and 5 , contended that the disputed property belonged to Thambayi Amma and after her death it devolved upon her children in equal shares. The trial court rejected that contention and found that the disputed 32 cents was not included in the plaint schedule properties in O.S. 329/991. That suits were also decreed. So in respect of disputed 32 cents there are two conflicting decrees. It is also brought to my notice that Kunjiraman Nambiar passed away and his legal representatives were impleaded as additional respondents in A.S. 810/1994. Meenakshi Amma is bound by the decree passed in O.S. 329/1991. But her children are not bound by the decree and the plaintiffs in O.S 329/1991 who are defendants in the subsequent suit are bound by the decree passed in that suit. So the only course open to me is to set aside both decrees and judgments and remand the two cases for consolidation and joint trial and for fresh disposal in accordance with law after giving reasonable opportunity to both sides to adduce further evidence also. It is also necessary to permit the legal representatives of Kunjiraman Nambiar to get themselves impleaded in O.S. 329/1991 and contest the the matter. For that purpose the order passed in I.A 1779/1992 is to be set aside.

Since the petitioner in that petition is no more. It is open to his legal representatives to file an application either to get themselves impleaded in that I.A or in the suit. If such a petition is filed the same shall be allowed and the legal representatives of Kunjiraman Nambiar shall be allowed to come on record in O.S 329/91 and contest the case. I also make it very clear that I have not considered the merits of the contentions raised by both sides and the decrees and judgments are set aside only for the purpose of fresh disposal of both suits in accordance with law.

7. In the result, A.S. No. 60 of 1993 and A.S. No. 810 of 1994 are allowed. The decrees and judgments passed in O.S. 329/1991 and in O.S 459/1992 and hereby set aside. Both the suits are remanded. . The order passed in I.A 1779/1996 is set aside . There will a direction to the Sub-judge to consolidate both the suits and try them jointly and dispose of the same afresh in accordance with law. Both sides shall be given a reasonable opportunity to amend their pleadings and adduce evidence. The parties shall appear in the court below on 4-9-2007.

K.PADMANABHAN NAIR, JUDGE

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